TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1901~~ 1902.

No. ~~192~~ 211.

PHINEAS PAM-TO-PEE AND OTHERS, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 11, 1901

(18,351.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 498.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 23, 1901.

1 In the Court of Claims.

PHINEAS PAM-TO-PEE and THREE HUNDRED AND Sixty-two Other Indians
vs.
THE UNITED STATES. } No. 21300.

1.—*Petition Filed April* 22, 1899.

To the Court of Claims:

The petition of Phineas Pam-to-pee and 362 other Indians whose names hereinafter appear respectfully shows:

That in 1833 the Pottawatomie with two other tribes of Indians had a large reservation on the west shore of Lake Michigan. Scattered bands of that tribe also had three small reservations aggregating 164 sections of land in southern Michigan. The tribe also were entitled to annuities under twelve treaties, six of which were temporary and six perpetual. September 26, 1833, they with the other tribes ceded the reservation west of Lake Michigan to the United States and agreed to remove west of the Mississippi river but the Michigan bands refused to join in the treaty, and the next day supplementary articles were added in which these bands joined whereby the Michigan reservations were also ceded and a portion of the tribe residing in Michigan were given permission to remove to the northern part of the State, the United States agreeing that in case of such removal that a just proportion of all former annuities and those under that treaty should be paid them at L'Arbre Croche. Thereupon a large proportion of them removed to northern Michigan, but a portion of the Nottawasepi and Pokagon bands of the tribe remained in southern Michigan and yearly from 1843 to 1866 were paid a part of what was promised them by the treaty.

2 Your petitioners further show that differences arising as to the rights of the Indians not removing west of the Mississippi river and the duty of the Government in the premises in order to judicially determine the same, the Congress passed an act which was approved March 19, 1890, entitled "An act to ascertain the amount due the Pottawatomie Indians of Michigan and Indiana" whereby the court was authorized to take jurisdiction and to try all questions of difference arising out of treaty stipulations with said Indians, and to render judgment thereon, as by the said act in the 26th Statutes at Large at page 24 will appear and to which reference is had, under which suits were commenced by your petitioners and others of said Indians in this court upon matters arising out of stipulations contained in said treaties, one of the suits being entitled—Phineas Pam-to-pee and 1,371 other Pottawatomie Indians of Michigan and Indiana against The United States (No. 16842) and the other entitled—The Pottawatomie Indians of Michigan and Indiana against The United States (No. 16743). Both suits being to recover the same annuities under the same treaties and there being

Indians in both suits entitled to share in such unpaid annuities, the two suits were consolidated and such proceedings were therein had that afterwards on the 27th day of June, 1892, by the consideration and judgment of said court in the consolidated case aforesaid, your petitioners herein with other Indians parties hereto, recovered of and from the United States the sum of $104,626 that being the amount of said annuities found by the court to be due and unpaid them at that date, but also establishing thereby their right to the perpetual annuities mentioned as well, the court designating and deciding that the Indians entitled to the just proportion of the unpaid annuities mentioned in the supplementary article referred to in the treaty of September 26th and 27th, 1833 and for whom and their descendants said judgment was rendered, were those parts of the Nottawasepi and Pokagon bands of Pottawatomies to whom the payments aforesaid were made in southern Michigan from 1843 to 1866.

3 And your petitioners state that they are a portion of the Indians in whose favor said judgment was rendered, some of them being Indians to whom said payments were made and others descendants and heirs respectively of those to whom said payments were made, and all being Indians designated and described by said court as those parts of the Nottawasepi and Pokagon bands of the Pottawatomies to whom the payments aforesaid were made in southern Michigan from 1843 to 1866 or descendants and heirs of those Indians so designated and described, the names of your petitioners being as follows:

1 Phineas Pam-to-pee,
2 Rodney Pam-to-pee,
3 Frank Pam-to-pee,
4 Jacob Pam-to-pee,
5 George Pam-to-pee,
6 Johny Pam-to-pee,
7 James David,
8 Mrs. Sarah David,
Their grandchildren,
9 Albert Mackety,
10 Betsy Mackety,
11 Mrs. Ida Mackey,
Children,
12 Frank Mackey,
13 Alice Mackey,
14 Mee-me Shaw-go-quate,
15 Mrs. Elizabeth Shaw-go-quate,
Children,
16 Isaac Edward,
17 Thomas Wezoo,
18 Mrs. Rosa Wezoo,
Children,
19 Mary Wezoo,
20 Elizabeth Wezoo,
21 Lucy Wezoo,

22 Martha Shaw-go-quate,
Children,
23 Angeline Shaw-go-quate,
24 Lewis Shaw-go-quate,
25 Mary Shaw-go-quate,
26 Mrs. Sarah Isaac,
27 Jacob Jackson,
28 William Caw-caw-be,
29 Mrs. Mary L. Caw-caw-be,
30 John Pam-to-pee,
31 Mrs. Mary Pam-to-pee,
32 Samuel Pam-to-pee,
33 David Nottaway,
34 Mrs. Josephine Nottaway,
Their children,
35 Peter Nottaway,
36 William Nottaway,
37 Phebe Nottaway,
38 Samuel Nottaway,
39 Julia Nottaway,
4 40 John Pam-to-pee, Jr.,
41 Mrs. Jane Pam-to-pee,
Children,
42 Mary Pam-to-pee,
43 Angeline Pam-to-pee,
44 Silas Pam-to-pee,
45 Phineas Pam-to-pee, Jr.,
46 Levie Pam-to-pee,
47 Elizabeth Pam-to-pee,
48 George Pam-to-pee,
49 Mrs. Phoeba Pam-to-pee,
Children,
50 John Pam-to-pee,
51 Henry Pam-to-pee,
52 Lucy Ka-kak,
53 Mary Mackey,
54 Samuel Mandoka,
55 Mary Mandoka,
Children,
56 Ida Mandoka,
57 Guyly Mandoka,
58 Grover Mandoka,
59 Joseph Mandoka,
60 Frank Mandoka,
61 Angeline Mandoka,
62 George Mandoka,
63 John Mackey,
64 Gust Mackey,
65 Jennie Johnson,
66 Mrs. Mary Alexis,
67 Children, one,

68 Amos Watson,
69 Stephen Pam-to-pee,
70 Mrs. Agnes Pam-to-pee,
71 Henry Birch,
72 Makey Shaw-go-quot,
73 Stephen Pam-to-pee and wife,
75 Moses P. Wakazoo, wife and son,
78 Joseph P. Wakazoo,
79 John Wakazoo and three sons,
83 David Au-gosa, wife and three sons,
88 Pash-kish-go-quay and son,
90 David Fox and son,
92 Lewis Medawis, wife and five children,
99 Alice Jackson and four children,
104 James Pigeon, wife and three children,
109 John Pigeon, wife and son,
112 Foster Crampton, wife and three children,
117 Saws-way, wife and child,
120 Levi Franssway, wife and child,
123 Mock-tay-waw,
124 Samuel Pay-co-tush,
125 Pay-she-ge-zhick and wife,
127 Three children of Shaw-o-ne-ge-zhick,
130 William McClure, wife and three children,
135 Joseph Sha-go-na-by, wife and six children,
143 Alexander Sha-go-na-by,
144 Peter Medawis, wife and four children,
150 Sampson Pigeon,
151 James Johnson,
152 Betsey Walker and three children,
156 George Walker and wife,
158 Caroline Walker,
159 Peter Thompson and wife,
161 Alfred Mark, wife and two children,
165 D. K. Foster, wife and child,
168 Lucy Foster,
169 Charles W. Foster,
170 Lincoln P. Foster,
171 James Foster,
172 Moses Foster,
173 John Macktay and wife,
175 Samuel Macktay,
176 Kelsey Isaac, wife and two children,
180 Ada Bennett and child,
182 Peter Oh-she-da-yah-sunk, wife and four children,
188 William Chippeway, wife and three children,
193 Edward Kay-kake and child,
195 Frank Kay-kake,
196 Isaac Kay-kake,
197 Nin-way-quay,
198 Ke-way-je-won, wife and child,

201 Kate Sha-go-na-by and five children,
207 Abrim Halfaday,
208 James Halfaday,
209 Samuel David,
210 Nancy Halfaday and two children,
213 John Battice and three children,
217 Lewis Battice,
218 Ching-gwan and wife,
220 George Ching-gwan, wife and two children,
224 Sin-mo-quay and two children,
227 George Mo-gwaw-go,
228 Henry Ketosh,
229 Simon Ketosh,
230 Caroline Ketosh,
231 Five children of Wallace Hinman,
236 Julia Pigeon,
237 Lewis Petoskey, wife and three children,
242 Bazel Petoskey,
243 Enos Petoskey,
244 Elizabeth J. Petoskey and two children,
247 James Petoskey, wife and three children,
252 Thomas F. Petoskey,
253 Jane Petoskey and two children,
256 Agnes G. Taylor,
257 Mary Lathrop,
258 Mary O. Peterson,
6 259 John Petoskey, wife and two children,
263 Frank Petoskey,
264 William F. Petoskey and Jane Petoskey,
266 Margaret Ke-way-din,
267 Moses Ash-quab, wife and four children,
273 Betsey John,
274 Solomon David and two children,
277 James Sau-ga-maw,
278 James Lewis and two children,
281 Joseph Bush,
282 Lucy Pokagon and two children,
285 Mary Taw-caw-waw-gay and child,
287 Emma Pepeyar and two children,
290 John Marso,
291 John Green,
292 Peter Gibson,
293 Mary Sha-sha-gway,
294 Frances Sha-sha-gway,
295 Maggie Cobmosay,
296 Joseph F. Sha-sha-gway,
297 William Sha-sha-gway, wife and five children,
304 Joseph Snay, wife and two children,
308 John Snay, wife and two children,
312 Eliza Fisher,
313 Theresa C. Snay,

314 Minnie Snay,
315 William J. Eness and three children,
319 Joseph Eness and child,
321 Lewis Eness and two children,
324 Emos Eness and child,
326 Henry Eness and child,
328 Pay-maw-me,
329 Mary Embre,
330 Lewis Thomas,
331 Nah-o-ge-zhick and two sons,
334 Nancy Kaw-o-sod, wife and four children,
340 Peter Willis,
341 Jacob Willis and two children,
344 Alexander La Line, wife and four children,
350 Jamie Riley,
351 Nancy Riley,
352 Julia La Line,
353 Elizabeth La Line,
354 Mary B. La Line,
355 John Jacobs,
356 Shaw-bo-way and child,
358 Peter Mackey,
359 Sarah Naw-zhe-way-quay and daughter,
361 David Bennett,
362 Na-so-we-din-no-quay,
363 Moses Ke-ma-ge-ma.

(NOTE.—*The names are not numbered in the original petition on file.*)

7 That said judgment was affirmed in the Supreme Court of the United States on appeal and the same still remains in full force unreversed and unpaid, so far as your petitioners are concerned, nothing having been paid them or either of them thereon.

They further state that by an act approved August 23, 1894, the Congress appropriated $104,626 to pay upon said judgment—28 Stat. at Large, 450—and by an act approved August 15, 1894, it appropriated $6,243.90 to apply upon the perpetual annuities established by the judgment—28 Stat. at Large, 295—and by an act approved March 2, 1895, it further appropriated $2,081.30 to apply upon said perpetual annuities—28 Stat. at Large, 885—and lastly by an act approved June 10, 1896, the Congress capitalized said perpetual annuities as ascertained by said judgment, and appropriated $43,707.30 to pay them in full—29 Stat. at Large, 330—the whole of said appropriation amounting to $156,658.50; each and all of them being made by Congress to pay the claim established by the judgment aforesaid to the claimants recovering the same, part of whom are your petitioners as aforesaid, the Commissioner of Indian Affairs being charged with the distribution of the funds to your petitioners and the other Indians in whose favor the judgment in said consolidated case was recovered subject only to the payment of the amount due for legal services rendered in the

prosecution and recovery of the same, but while $105,025.07 of said money was distributed among 273 of the Indians, none of it was paid your petitioners although equally entitled thereto. That in fact the defendant paid no part of the funds so appropriated by the Congress for that purpose to your petitioners or to either of them, but so to do although often requested, refused.

That so far as your petitioners can ascertain, the Indians recovering said judgment and entitled to share in the funds so appropriated to satisfy the same number, 636, each being entitled to an equal part thereof, whereof your petitioners are entitled to 363 parts or shares, the other 273 Indians interested in it having been paid—but they file this petition on behalf of themselves and all others entitled (if any there be) who may choose to come in and share therein, and as the exact number having a right to share in the judgment and funds mentioned is now uncertain, your petitioners ask a judgment for such proportionate amount thereof as the evidence may show they are entitled to on the trial of the case and that this may be allotted and awarded to them severally.

8 No assignment or transfer of said claim or any part thereof or interest therein has been made to your petitioners' knowledge or belief, and the claimants are justly entitled to the amount herein claimed after allowing all just credits and offsets.

JNO. B. SHIPMAN,
Attorney for Petitioners.

Address: Coldwater, Michigan.

DISTRICT OF COLUMBIA, }
City of Washington, } *ss:*

Before me the undersigned appeared John B. Shipman, attorney for the above-named petitioners, and made oath that he is the authorized attorney of the Indians named as petitioners in the foregoing petition in the matter therein mentioned. That he knows the contents of said petition and that the matters therein stated are true so far as the same are stated on his knowledge and as to the matters therein stated on the knowledge, information or belief of the petitioners, he believes them to be true.

Dated, Washington, April 22nd, 1899.

[NOTARIAL SEAL.] GEORGE W. TAYLOR,
Notary Public.

II.—*Traverse. Filed April* 18, 1901.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimants herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimants have at all times borne true faith and allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against

the said Government, the Attorney General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

L. A. PRADT,
Assistant Attorney General.

V.

9 Court of Claims.

III.—*Findings of Fact and Conclusion of Law. Filed May* 20, 1901.

This case having been heard by the Court of Claims, the court, upon the evidence, find the facts to be as follows:

I.

Under the act to ascertain the amount due the Pottawatomie Indians of Michigan and Indiana approved March 19, 1890 (26 Stat. L., 24), two suits were brought in this court, one entitled The Pottawatomie Indians of Michigan and Indiana *v.* The United States, No. 16743, and the other, Phineas Pam-to-pee and 1,371 Other Pottawatomie Indians of Michigan and Indiana *v.* The United States, No. 16842.

II.

On the 8th day of January, 1891, the court ordered the two cases to be consolidated, to the end that the adverse claims of the two bodies of claimants might be heard and disposed of by one trial and judgment.

On the 27th day of June, 1892, judgment was rendered therein against the United States for $104,626. The claimants in both causes appealed to the Supreme Court. The judgment so appealed from was affirmed and the mandate of the Supreme Court was filed in this court on the 20th day of April, 1893.

The petitions of the respective parties in the two cases above named, the judgment so rendered as above stated, and the mandate of the Supreme Court affirming the same are appended and form part of this finding.

III.

In June, 1895, the Secretary of the Interior ordered and directed that a census of the Indians be made under the act 2d March, 1895 (28 Stat. L., 894). The census-roll was prepared under instructions of the Commissioner of Indian Affairs, dated June 8, 1895—approved by the Secretary of the Interior June 15, 1895—by John W. Cadman, and is known as the "Cadman census-roll." While the agent was so engaged in taking the census, John B. Shipman, Esq., attorney of record in the case of Pam-to-pee *v.* United States, addressed a communication to the Secretary of the Interior, dated July 27, 1895, representing that such census, by reason of the manner in which it was being taken, would omit many Indians entitled to be paid under the judgment of the court. Before further instructions were given by the Secretary of the Interior the agent Cadman, in

August, 1895, made and returned and filed in the Interior Department the census so made by him.

After this roll had been prepared many applications for enrollment were received by the Commissioner of Indian Affairs, based upon the statement that while such applicants were not on the roll of 1866 they were on prior rolls from 1843 to 1866, or were the descendants of such persons. The question was then submitted to the Secretary of the Interior for an opinion as to whether the rolls from 1843 to 1866 should be considered in connection with the enrollment of those who were entitled to participate in the distribution of the $104,626 awarded by the Court of Claims.

On January 10, 1896, the Secretary of the Interior made his final decision in regard to the Indians who should be enrolled and paid under the judgment of this court and the appropriation of Congress. Marcus D. Shelby, a special Indian agent, was designated by the Commissioner of Indian Affairs to examine and report upon the claims of the several parties alleging to be descendants of the Pottawatomie Indians of Indiana and Michigan, who were permitted by supplemental clause to the treaty of September 27, 1833, to remain East, and for whom the Court of Claims rendered a decision in their favor of $104,626 June 27, 1892. The instructions given to
10 the agent by the Commissioner were dated February 5, 1896.

The agent so designated proceeded to Michigan and reported the result of his investigation, bearing date March 14, 1896. The report so made was accepted by the Secretary of the Interior as substantially correct, and the amount appropriated by Congress in satisfaction of the judgment of this court (28 Stat. L., 450) as well as other funds appropriated to pay the Indians upon treaties mentioned in the petitions in said suits (the sum paid being $118,554.52) paid to the persons upon the roll made by Cadman, after adding thereto two names on the recommendation of Shelby in closing his report as persons mentioned on the census-roll by Inspector Cadman but not found on the roll of 1866. Later one more was added by the department. The money was paid to the Indians as communal owners, that is to say, it was paid *pro rata* to every living member of that portion of the tribe entitled to participate in the funds and not *per stirpes*.

The instructions of the Commissioner of Indian Affairs to Cadman June 8, 1895; the letter of John B. Shipman July 27, 1895; the decision of the Secretary of the Interior January 10, 1896; the instructions given to the agent, Shelby, February 5, 1896, and the report of the agent March 4, 1896, are appended and form a part of this finding.

Enclosed in the said letter of John B. Shipman was a list containing the names of over one hundred and fifty of the claimants herein, the names of their ancestors and number on the pay-roll of 1843 and 1844 being given as stated in the letter.

IV.

None of the Indians, parties in or represented by the present suit, were paid as aforesaid. A large number of them, to wit, 272, whose

names are set forth in Schedule A annexed to claimants' request for findings, were descended from Indians whose names were enrolled on the rolls of Indians in Michigan in the years 1843, 1844 and 1866. A portion of the Indians who remained in Michigan as coming within the exemption treaty of September 27, 1833, were represented in both petitions in the cases of The Pottawatomie Indians *v.* The United States, and The Pam-to-pee Indians *v.* The United States.

V.

Pursuant to a stipulation of the parties, the facts stated in the findings of fact and in the opinion of the court in cases 16743 and 16842 as reported and set forth in 27 Court of Claims Reports, p. 403, are found as additional facts in this case.

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimants' petition should be dismissed.

And it is further ordered that the claimants' request for findings of fact be refused as irrelevant and immaterial, except so far as the same are found in the findings of the court and appear upon the records of the former cases, Nos. 16743 and 16842.

BY THE COURT.

11 IV.—*Opinion of the Court. Filed May* 20, 1901.

NOTT, Ch. J., delivered the opinion of the court:

When the former cases were before the court (27 C. Cls. R., 403), in which the present claimants were represented, it was found as a fact (*ib.*, p. 408) that the number of Pottawatomie Indians who remained in Michigan under the treaty of 1833 was 291, and the number who removed to the West was 2,812; and it was held that the just proportion of those who remained in Michigan, in certain tribal funds, would amount, June 30, 1892, to $17,630.67. To this "just proportion," $17,630.67, was added balances of annuities and other funds, bringing up the amount for which judgment was rendered to $104,626.

It is unfortunate for some of the claimants in the present suit that the evidence upon which they now rely was not before the court then. In the former cases the parties who were represented by the suit of The Pottawatomies *v.* United States took the ground that they were Indians and descendants of Indians in Michigan who had been recognized by the administrative branch of the Government as being entitled to remain in Michigan under the supplemental article of the treaty of 1833. The parties represented by the suit of Pam-to-pee *et al. v.* United States contended that the others had neither complied with the terms of the treaty by moving to the West, nor with the supplemental article of the treaty by moving to the north; and they stood, accordingly, upon the ground that they, who had complied with the supplemental article, were the only Indians entitled to par-

ticipate in the tribal funds. The court deemed itself bound by the action of the Government in recognizing the parties represented by the former suit, and accordingly rendered judgment for them; but the court did not undertake to determine who the then existing individual claimants were who were entitled to participate in the distribution.

To ascertain the proportional amount of the common fund which should be distributed the court resorted to the first rolls which had been made by the Indian Office after the treaty of 1833, viz., those of 1843–'44, and to a summary of the roll of 1866.

The present claimants accept the judicially determined facts of the former controversy as incontrovertible, but they allege and endeavor to prove that they are Indians or descendants of Indians who were upon the rolls of 1843 and 1844, and that they have not been paid.

It now appears that the ascertained fund—the judgment—was paid to only 272 Indians, a number slightly less than the number of Indians existing in 1833; and this diminished number is striking because the fund was distributed as communal property—that is to say, both parents and children took *per capita* as members of the community. If it had been an ordinary case of distribution according to common-law rules, there would be, say, two grand parents living, who alone would be entitled to be paid. But in a case of communal property there would be two grand parents, and, say, four parents, and, say, sixteen grandchildren, a total of twenty-two persons, all equally entitled to share in the fund. The claimants in the present suit bring the number of descendants up to 544 persons.

The gravamen of the claimants' case is this: The Secretary of the Interior directed that a census, so called, be made of Indians entitled to participate in the judgment. On the 27th of July, 1895, the agent of the department being still in the field and engaged in the work, the claimants' attorney addressed a letter to the Secretary of the Interior calling his attention to the fact that the agent had taken as a basis of investigation a roll of the Michigan Indians made in 1866, and had excluded from consideration the rolls of 1843 and 1844; and he pointed out in his communication that this proceeding would work great injustice to persons or descendants of persons who had died between 1843 and 1866; and he insisted that the census should omit no one whose name was on those rolls which had been before the court. The Secretary of the Interior, on the 10th of January, 1896, after due consideration of the matter, decided that those should be enrolled who make satisfactory proof "that they were on one of the rolls taken in the years 1843 to 1866 inclusive, or are descended from some one on one of those rolls."

To this the claimants' counsel did not object; he had, indeed, suggested in his communication of the 27th of July, 1895, that that was the proper course to be pursued. But he insists that this was not done; that the order to do so, as well as the decision of
12 this court, was ignored; that no attention was paid to the list containing the names of Indians entitled to share in the

judgment fund; that no other census than Cadman's census-roll was ever made or attempted to be made.

The evidence does not altogether sustain the claimants' case. It appears, on the contrary, that the agent endeavored to carry out his instructions. His report to the Commissioner of Indian Affairs, March 14, 1896, shows that he traveled through the country where these Indians resided or were supposed to reside and notified them, so far as he could, to appear and prove their cases. In his report he said: "I found these people very badly scattered, and as they do not frequent post-offices, the notices prepared for me to be posted in the various post-offices, to give them notice of my coming, were of but little value. In nearly every instance, on reaching the vicinity of these Indians, I had to take teams and drive to their homes. I got, however, the newspapers to publish the principal points I would visit." A number appeared, some of whom claimed because their ancestors' names were on the rolls of 1843 and 1844, others because they had Pottawatomie blood in their veins. All of these applicants were rejected for various reasons, some because their proof was insufficient, some because they or their forefathers had allied themselves with other Indian tribes, some because their fathers' names had been erroneously placed, in the opinion of Indian agents, upon the former rolls and had been dropped from subsequent rolls. The investigation was hurried, and is to the judicial mind unsatisfactory; yet it cannot be said that the agent disregarded the rolls of 1843 and 1844. The evidence produced was to his mind insufficient and unsatisfactory to prove that the forefathers of those applicants had rightfully been placed upon those rolls. The evidence now produced to establish the fact that 272 of the present claimants are direct descendants of the Indians who were upon the rolls in 1843 and 1844 is not altogether satisfactory to the court, but in the absence of countervailing testimony it may be said to present a *prima facie* case.

If we turn to the legal record in the case the following facts appear:

The judgment which was recovered in this court on the 27th June, 1892, is in these words:

"The court, on due consideration of the premises, find for the claimants and do order, adjudge, and decree that the said Pottowatomie Indians do have and recover of and from the United States the sum of one hundred and four thousand six hundred and twenty-six dollars."

No decree was entered designating the individuals among whom the fund was to be distributed or directing the manner of distribution or the officer who was to make the distribution, such as were entered in former cases of Indian claimants. (Western Cherokees *v.* United States, 27 C. Cls. R., 1, 61; Journeycake *v.* United States, 28 *ib.*, 281, 319; Whitmire *v.* Cherokee Nation *et al.*, 30 *ib.*, 138, 177; decree entered March 18, 1895.)

The judgment above set forth in the case of the Pottawatomie Indians was appealed from by the claimants in the case of Pam-to-pee *v.* United States, but not by the United States (148 U. S. R., 691),

and was affirmed. The Supreme Court in its opinion said that it is contended with a great show of reason by the appellants—

"That the question of what Indians are entitled to participate in the fund is one of law, to be settled by the court, and should not be left to clerical functionaries. Our difficulty in disposing of this part of the subject is that we have neither findings nor concessions that enable us to deal with it intelligently." (*Ib.*, 704.)

In regard to the individual Indians entitled to recover, the Supreme Court also said:

"But these facts are not found for us in any authoritative form. Nor, indeed, would it seem that the court below was furnished with information sufficient to enable it to define what Indians or what number of Indians entitled to distribution are represented by the respective attorneys or agents."

At this point, if the former case had been a similar suit in chancery between ordinary litigants, it would have been referred to a master or referee to ascertain and report as to the individual claimants entitled to recover, and the final decree would not have been entered until a coming in and confirmation or correction of the master's report. The Secretary of the Interior, however, seems to have inferred from language in the opinions of the two courts that he was authorized to proceed and ascertain who those Indians were, and to prescribe the methods for so ascertaining and determining the amount to be distributed to each individual claimant. He apparently requested an appropriation from Congress to meet the expenses of the investigation; and Congress, by the act 2d March, 1895 (28 Stat. L., 894), enacted:

13 "That the Secretary of the Interior is hereby authorized and directed to detail or employ an Indian inspector to take a census of the Pottowatomie Indians of Indiana and Michigan who are entitled to a certain sum of money appropriated by Congress to satisfy a judgment of the Court of Claims in favor of said Indians. And for the purpose of making the payment to the Pottowatomie Indians of Indiana and Michigan of the one hundred and four thousand six hundred and twenty-six dollars, appropriated by the last Congress to satisfy a judgment of the Court of Claims, there is hereby appropriated the sum of one thousand dollars."

The appropriation above referred to, for the satisfaction of the judgment of this court, is in the sundry civil appropriation act, August 23, 1894 (28 Stat. L., 424, 450), and is in these words:

"For payment of judgments of the Court of Claims, as follows:

"To the Pottawatomie Indians of Michigan and Indiana, one hundred and four thousand and twenty-six dollars."

The Secretary of the Interior then appointed an agent to ascertain the names and number of the claimants entitled to be paid, and prescribed the means and methods for ascertaining them and the principles upon which the fund should be distributed, and the whole of the fund was paid away. Nevertheless, there is not a line in the judgment of this court or in any statute of Congress which empowered or authorized the Secretary to dispose of the fund.

These facts present a delicate if not difficult question. The coun-

sel for the defendants has taken the broad ground that the Government cannot be made to pay a second time; and if this were an ordinary case of the kind, the array of well-chosen authorities which he has presented would be overwhelming. But there is no case or authority cited which exactly meets the conditions of the present case. The defendants were not administrators, executors, or trustees paying involuntarily under the imperative order of a court; no court could have committed them for contempt if they had refused to pay, and their official representative, the Secretary of the Interior, was not without notice that there were claimants seeking to participate in the fund who also claimed to be within the letter and spirit of the court's decision.

The authorities cited by the counsel may be resolved into two general classes: one where an officer, such as an administrator or executor, pays away a fund under the coercion of a decree or order of a court having jurisdiction of the fund; the other, where an innocent stakeholder, without fault, negligence, or mistake, pays away a fund to the injury of a negligent party who fails to present his claim in due time. Apart from these authorities there is the great principle of equitable estoppel, that where a man remains silent when he ought to speak he cannot be permitted to speak when it will be to the injury of another person, who was misled by his silence. In this case the claimants knew, or could have known, that the census made by an agent of the Interior Department was returned and filed in August, 1895, and that the final decision of the Secretary of the Interior was made in January, 1896. So far the case seems clear. The resulting question is, Were the claimants bound to ascertain between that time and the payment of the fund during the month of November, 1896, that their names were on the pay-roll, or might they assume that the direction of the Secretary would be correctly carried out by his subordinates?

The court has reluctantly come to the conclusion that that burden rested upon the claimants. The documentary proceedings in the Interior Department were not completed when the order of the Secretary was made. His decision was his direction that a new pay-roll be made, and the circumstances required vigilance on the part of persons whose right to be there had not yet been determined by name to see that their names were duly placed upon the final pay-roll. It is the misfortune of these claimants that they did not do so.

14 The counsel for the claimants has cited the practice of courts of equity, and particularly the English courts, in requiring notice to be published in case of multitudinous defendants, requiring them to come in and assert their rights. But such notices are not given for the benefit of persons who have appeared in and have actual knowledge of a suit. These Indians were dwelling in a not very wide extent of territory; the subject of litigation was something of more than common interest to every one of them. Assuredly the act of Congress of March 19, 1890 (26 Stat. L., 24), authorizing them to bring suit in this court to determine their rights, the bringing of two suits by contesting claimants, the trial

of the cases, the decision of this court, the appeal to the Supreme Court, the decision of the Supreme Court, the appropriation by Congress for the payment of the judgment, the act of Congress authorizing a census to be made, and the taking of the census by an agent of the Interior Department were more than equivalent to the publishing of a notice in the newspapers.

The counsel for the claimants has urged with great earnestness that these parties for whom he appears are simple, friendless, and unlettered men, women, and children, knowing little of their own rights and utterly ignorant of legal proceedings. And that is true. But the former case, in which the court might have exercised the discretion of a court of equity and allowed parties to come in even after the decree and assert their rights, is closed; the judgment therein has been satisfied; the claimants stand directly upon their legal rights, and there cannot be one law for the intelligent and another for the ignorant.

The judgment of the court is that the petition be dismissed.

V.—*Judgment of the Court.*

PHINEAS PAM-TO-PEE and Others
vs.
THE UNITED STATES. } No. 21300.

At a Court of Claims held in the city of Washington on the 20th day of May A. D. 1901 judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the defendants and do order, adjudge and decree that the petition of the claimants be dismissed.

BY THE COURT.

15 VI.—*Application for and Allowance of Appeal.*

PHINEAS PAM-TO-PEE ET AL.
vs.
THE UNITED STATES. } No. 21300.

From the judgment rendered in the above-entitled cause against the claimants May 20, 1901, the claimants, by their attorney, on the 29th day of June, 1901, make application for and give notice of an appeal to the Supreme Court of the United States.

JOHN B. SHIPMAN,
Attorney for Claimants.

Filed June 29, 1901.

Allowed.
November 30, 1901.

CHARLES C. NOTT,
Chief Justice.

16 In the Court of Claims.

PHINEAS PAM-TO-PEE and Others
vs.
THE UNITED STATES. } No. 21300.

I John Randolph assistant clerk of the Court of Claims hereby certify that the foregoing are true copies of the pleadings in the above-entitled cause, of the findings of fact, and conclusion of law, filed by the court,—of the opinion of the court,—of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

Seal Court of Claims.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 10th day of December A. D. 1901.

JOHN RANDOLPH,
Ass'l Clerk Court of Claims.

Endorsed on cover: File No. 18,351. Court of Claims. Term No. 498. Phineas Pam-to-pee and others, appellants, *vs.* The United States. Filed December 11th, 1901.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

PHINEAS PAM-TO-PEE ET AL. *v.* THE UNITED STATES. } No. 498. Appeal from the Court of Claims.

It is hereby stipulated between the counsel for the appellants and the Attorney General for the United States that the transcript of the record in this case from the Court of Claims, filed in this court December 11, 1901, is imperfect and defective in this, that there is omitted therefrom the appendix referred to in findings II and III of the Court of Claims in this case, and that there was also omitted from said transcript the claimants' request for findings of fact referred to in the conclusion of law of the Court of Claims in said case, which omissions have been supplied by the additional return to this court of the transcript of the record of said case made by the clerk of the Court of Claims and certified under his official seal, dated the 9th day of January, 1901,—and agree that said additional return hereto attached may be filed as an addition to the record in said case.

JNO. B. SHIPMAN,
Counsel for Appellants.
L. C. PRADT,
Assistant Attorney General.

In the Court of Claims.

PHINEAS PAM-TO-PEE and Others, Appellants, *versus* THE UNITED STATES. } No. 21300.

I, John Randolph, assistant clerk Court of Claims, by order of said court, hereby certify that the annexed copy of the requests of claimants for findings of fact with the accompanying Schedule "A"—and also the copy of the appendices to the findings of fact filed by the court and numbered II and III, shall be added to and form part of the record on appeal to the Supreme Court of the United States in the above-entitled cause which record was certified to said Supreme Court on the 10th day of December A. D. 1901.

Seal Court of Claims.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 9th day of January, 1902.

JOHN RANDOLPH,
Ass't Clerk, Court of Claims.

PHINEAS PAM-TO-PEE and Others
vs.
THE UNITED STATES.
No. 21300.

Claimants' Request for Findings of Fact.

Filed November 26, 1900.

The claimants, considering the facts hereinafter set forth to be proven and deeming them material to the due presentation of this case in the findings of fact, request the court to find the same as follows:

1. To judicially determine the claim of certain Indians against the United States, Congress passed an act entitled "An act to ascertain the amount due the Pottawatomie Indians of Michigan and Indiana," approved March 19, 1890, (20 St. at L. 24) under which two suits were commenced in this court, one entitled "The Pottawatomie Indians of Michigan and Indiana *vs.* The United States No. 16,743," and the other, "Phineas Pam-to-pee and 1,371 other Pottawatomie Indians of Michigan and Indiana *vs.* The United States, No. 16,842."

Opinion in 27 Ct. Cl. 403.

2. The claimants in both of said cases were Indians who are embraced within the terms of said act of Congress and the claim stated in both petitions was for unpaid annuities under the same twelve treaties, six of which were temporary and six perpetual.

27 Ct. Cl. 403.

3. On motion of the defendant the two cases were consolidated and tried as one and judgment entered therein June 27, 1892, in favor of a portion of the Indians who were claimants and against the United States for $104,626, that being their portion of the annuities due and unpaid them up to that date under the twelve treaties mentioned in the petitions, but also establishing thereby their right to the annuities to grow due thereunder as well, which judgment was affirmed in the Supreme Court on the claimants' appeal.

27 Ct. Cl. 403.
148 U. S. 691.

4. The parties in whose favor said judgment was rendered are Indians who were in both of said suits as petitioners and claimants therein, a portion being in case No. 16,743 and another portion as claimants in case No. 16,842.

27 Ct. Cl. 403, finding 12.

5. The parties who recovered said judgment are those parts of the Pokagon and Nottawasepi bands of Indians and their descendants to whom annual payments were made by Government agents

in southern Michigan from the years 1843 to 1866 inclusive upon a portion of said annuities.

27 Ct. Cl., 403, opinion and findings 12 to 14.

6. The claimants in the case are all descendants and heirs of those parts of the Pokagon and Nottawasepi bands of Indians to whom the annual payments upon said annuities were made by Government agents in southern Michigan from the years 1843 to 1866 inclusive.

7. The claimants in this cause are a portion of the Indians in whose favor the judgment mentioned was rendered.

27 Ct. Cl. 403.

8. The total number of Indians recovering said judgment and entitled to share in its payment was 544 of whom 272 are claimants in this case.

9. To satisfy the judgment mentioned and the perpetual annuities thereby established (those being capitalized) Congress appropriated in all $156,658.50, the Commissioner of Indian Affairs being charged with the distribution of the funds.

10. So much of the funds appropriated as were distributed among the Indians, was paid to those whose names appeared upon the said annuity pay-roll of said Indians for the year 1866 and the descendants of those whose names there appear (except one descended from an Indian on the pay-roll of 1856) to the exclusion of all on the other pay-rolls for the year mentioned or who were descended from Indians whose names were upon any other than the roll of 1866.

11. No part of the money so appropriated as stated in request 9 to pay said judgment and the perpetual annuities thereby established, was paid to the claimants in this case nor was it paid to any or to either of them.

12. The claimants' part and proportion of said judgment is wholly unpaid.

13. The defendant, although requested so to do, has neglected and refused to pay the claimants their part or share of said judgment or of the said moneys appropriated to pay the same, or any part thereof.

14. The names of the 272 claimants in this cause who received nothing upon said judgment nor were paid any part of the fund appropriated to pay it, are contained and described in Schedule A hereto annexed.

15. $78,329.25 of the moneys appropriated by Congress to pay said judgment and the annuities thereby established as stated in the 9th request belong to the 272 claimants mentioned in request 14 and is wrongfully withheld from them by the defendant, the amount belonging to each being $287.97.

16. The sum of $78,329.25 upon the judgment and appropriations mentioned is due and unpaid the claimants in this cause from the defendant.

17. The claimants have no tribal origination and have adopted the habits of civilized life.

JNO. B. SHIPMAN,
Attorney for Claimant.

Schedule A.

Samuel Mendokay
Grover, Guyley and Austin Mendokay
Joseph Mendokay
Frank, Angeline and George Mendokay
Mary Mendokay
Ida Mendokay
Betsy Walker
Caroline Walker
Mrs. Rosa Wezoo
Mary, Lucy and Elizabeth Wezoo
James Johnson
Mrs. Joseph Sha-go-na-by
Her six children
Alexander Sha-go-na-by
Mrs. Peter Medawis
Helen, Johnson, Mary and Hannah Medawis
Sampson Pigeon
Solomon, Jacob, William and Hiram Walker
Mrs. Alfred Mark
Albert, Angeline and Jennie Mark
Sin-no quay
Her two children
John Pam-to-pee
Samuel, George, Henry and John (Jr.) Pam-to-pee
John Pam-to-pee (George's son)
Phineas Pam-to-pee
Rodney, Frank, Jacob, George and Stephen Pam-to-pee
Mary Ann Pam-to-pee
Johnny Pam-to-pee
Mary, Angeline, Silas, Levi, Elizabeth and Phineas (Jr.) Pam-to-pee
Mrs. Jane Pam-to-pee
Mee-me Shaw-go-quot
Mackey Shaw-go-quot
Joseph Mee-me
Mary, John and Gus Mackey
Jennie Johnson
Mrs. Mary Alexis
Thomas Alexis
William Caw-caw-be
Mary L. Caw-caw-be
Mrs. Josephine Nottaway
Peter, William and Samuel Nottaway
Mrs. Mary Pam-to-pee
David Nottaway
Amos Watson
Thomas Wezoo
Mrs. Agnes Pam-to-pee
Mary, Lucy and Elizabeth Wezoo
Mary Cob-cob-mo-sa
Mrs. Sarah David
Albert and Betsy Mackety
George Mo-gwaw-go
James David
Mrs. Ida Mackey
Frank and Alice Mackey
Mrs. Sarah Isaac
Henry Bireh
Emma Pepevar
Her two children
Joseph P. Wakazoo
Moses P. Wakazoo
John Wakazoo
John Wakazoo's four children
Mrs. David Au-go-sa
Her three children
Moses Ash-quab
Mrs. George Walker
Moses Ash-quab's three children
Betsy John
David Bennett
Pash-kish-go-quay
David Fox
Adam Fox
Mrs. Lewis Medawis
Sarah, Eliza Nancy, Henry and William McKinley Medawis
Mrs. James Pigeon
Mrs. John Pigeon
Alice Jackson
Alice Jackson's seven children
Foster Crampton
His three children
David K. Foster

Martha Shaw-go-quot
Angeline, Louis and Mary Shaw-go-quot
Isaac Edward
James Pigeon
Sarah Pigeon
Jane Pigeon
John Pigeon
Wallace Pigeon
Rosa Pigeon
Peter Thompson
Lucy Pokagon
Elliott Pokagon
Lucy Pokogon's other child
John Saws-way
Levi Fransway
His three children
Pe-nas-se-wat-no-quay
Nuck-quot
Samuel Pay-co-tush
Na-so-we-din-o-quay
Pay-she-ge-zhick
Shaw-o-ne-ge-zhick
William McClure
His three children
John Marso
William Chippeway
His three children
Nin-way-quay
Her three children
Amos Pay-maw-me
Albert Pay-maw-ne
Lewis Thomas
Edward Kay-kake
His grandchild
Frank Kay-kake
John Kay-kake
Isaac Kay-kake
Louis Ching-quash
Ke-way-je-won
His son
Ching-gwan
George Ching-gwan
Pe-nas-wa-gee-shick
Kate Sha-go-na-by
Her five children
Abrim Halfaday
Lucy, Charles, Lincoln, James and Inman Foster
Moses Foster
Mrs. John Macktay
James Halfaday
Nancy Halfaday
Her two children
James Sau-ga-maw
Samuel David
Solomon David
William J. Eness
His three children
Joseph Eness
His child
Lewis Eness
His two children
Enos Eness
His child
Henry Eness
His child
James Zoondah
His two grandchildren
Camburn Zoondah
Levi Zoondah
His two children
Peter Zoondah
Jacob Jackson
Lucy Kay-kake
John Battice
Lewis Battice
John Battice's four other children
Mary Sha-sha-gway
Frances Sha-sha-gway
Joseph F. Sha-sha-gway
William Sha-sha-gway
His five children
Joseph Snay
His three children
John Snay
His two children
Peter Mackey
Sarah Naw-zhee-way-quay
Her two children
Angeline As-sig-in-ac
William, Lucy, Frank and Mitchell As-sig-in-ac

Appendix to Finding II.

The Pottawatomie Indians of Michigan and Indiana
v.
The United States.
} No. 16743.

Petition. Filed April 14, 1890.

Petition.

To the honorable the Chief Justice and judges of the United States Court of Claims:

The Pottawatomie Indians of Michigan and Indiana, by the undersigned, their duly appointed agent and attorney, in behalf of all the Pottawatomie Indians of said States, respectfully represent:

First. That this petition is filed, and the jurisdiction of this court is invoked, under and by virtue of the provisions of the following act of Congress:

An act to ascertain the amount due the Pottawatomie Indians of Michigan and Indiana.

* * * * * * *

Third. In the year 1795, and subsequently, the Government of the United States made treaties with the Ottawa, Chippewas, and Pottawatomie Indians, in which they were formally recognized as distinct nations uniting in the same treaties; but more recently they were known as the United Nation of Pottawatomies, and since 1846 as the Pottawatomie nation. By the provisions of the several treaties the Indians ceded lands to the Government, and the Government paid for the same in other lands, in money, and in goods and pledged annuities—some for a short and some for a long period.

On the 26th of September, 1833, a treaty was made by which the nation ceded to the United States about 5,000,000 acres of land lying on the western shore of Lake Michigan, for which the Government gave and pledged a satisfactory consideration.

A part of the nation did not at that time agree to the treaty, but the next day, being the 27th of September, 1833, those who had declined, and were known as the chiefs and head men of said United Nation of Indians, residing upon their reservations of land lying in the Territory of Michigan, south of Grand river, entered into a treaty supplementary to that which had been executed the previous day, by which they became parties to the main treaty, upon terms specified in the supplementary treaty—one of which permitted them to remove to northern Michigan and declared that in case of removal they should be entitled to share in all annuities payable under former treaties, and that arising from the sale of the reservation on which they then resided.

The Commissioner of Indian Affairs, in a letter addressed to the Secretary of the Interior, dated November 15, 1862, said that the main tribe removed to their new homes, west of the Mississippi, and

the Catholic portion, your petitioners and their forefathers, to the northern parts of Michigan; which is evidence that they complied with the condition upon which they were to share in the annuities due the nation.

This Government has made 24 different payments to your petitioners on account of their annuities since the treaty of September 27, 1833.

The nation was permitted to remain on the lands they ceded to the Government until 1836, and received all their annuities there, of which these petitioners received their portion down to and including the year 1835, prior to which time your petitioners made no claim against the Government.

Fourth. Your petitioners were parties to all treaties made by the United States with the Pottawatomie Nation of Indians, and were entitled to share *per capita* in all annuities secured to said nation by said treaties, and that no doubt should be permitted to cloud the title of your petitioners to share in the annuities secured by these several treaties, the supplementary treaty, dated September 27, 1833, was framed and ratified between the United States and your petitioners, the caption and first and last articles of said treaty being in the following words:

* * * * * * *

Twenty-first. Your petitioners further represent that the following payments have been made them by the United States since the treaty of September 27, 1833; total $75,162.50. (See letter of E. B. French, Second Auditor, dated March 27, 1872, and exhibits.)

The $1,587.50 was paid to those Pottawatomies residing in Michigan in conformity to, and as their proportion of, the treaty of July 29, 1829, and the second article of the supplementary treaty of September 26, 1833, for all the years that the same was paid, excepting for the years 1851 and 1865, in which years the treaty of 1833 is not included.

The payment of $39,000 in 1866 was made in conformity to the joint resolution of Congress approved July 28, 1866. (Vol. 14, U. S. Stat. L., p. 370.)

In 1843 Robert Stuart paid 253 Indians	$1,587.50
In 1844 Robert Stuart paid 269 Indians	1,587.50
In 1845 Wm. A. Richmond paid 217 Indians	1,587.50
In 1846 Wm. A. Richmond paid 204 Indians	1,587.50
In 1847 Wm. A. Richmond paid 244 Indians	1,587.50
In 1848 Wm. A. Richmond paid 260 Indians	1,587.50
In 1849 Chas. P. Babcock paid 260 Indians	1,587.50
In 1850 Chas. P. Babcock paid 218 Indians	1,587.50
In 1851 William Sprague paid 229 Indians	1,587.50
In 1852 William Sprague paid 214 Indians	1,587.50
In 1853 Henry C. Gilbert paid 219 Indians	1,587.50
In 1854 Henry C. Gilbert paid 236 Indians	1,587.50
In 1855 Henry C. Gilbert paid 236 Indians	1,587.50
In 1856 Henry C. Gilbert paid 221 Indians	1,587.50
In 1857 A. M. Filch paid 239 Indians	1,587.50

In 1858 A. M. Filch paid 234 Indians	1,587.50
In 1859 A. M. Filch paid 253 Indians	1,587.50
In 1860 A. M. Filch paid 236 Indians	1,587.50
In 1861 De Wit C. Leach paid 235 Indians	1,587.50
In 1862 De Wit C. Leach paid 247 Indians	1,587.50
In 1863 De Wit C. Leach paid 246 Indians	1,587.50
In 1864 De Wit C. Leach paid 242 Indians	1,237.50
In 1865 Richard M. Smith paid 232 Indians: Principal, in currency, $1,587.50; premium in gold, $692.24	2,279.74
In 1866 Richard M. Smith paid 338 Indians	39,000.00

The above shows the number of Pottawatomie Indians residing in Michigan in the years indicated who received the amount as shown thereon, as the same appears from the receipt rolls on file in the Indian Office.

* * * * * * *

Upon the foregoing statement there appears to be due from the United States to the Pottawatomie Indians of Michigan and Indiana the sum of $223,035.46, and your petitioners demand judgment for said sum.

JOHN CRITCHER,
Attorney for Plaintiffs.

PHINEAS PAM-TO-PEE AND 1,371 OTHER POTTAWATOMIE INDIANS OF MICHIGAN AND INDIANA
v.
THE UNITED STATES.
No. 16842.

Filed Nov. 5, 1890. J. R.

To the Court of Claims:

The petition of said Indians respectfully shows—

That your petitioners number 1,372, and their names and residences are as follows:

* * * * * * *

That your petitioners are not parties to the suit lately commenced in this court entitled: "The Pottawatomie Indians of Michigan and Indiana *v.* The United States" (No. 16743), and they are not represented therein; that the attorney appearing of record in said cause had and has no authority to act for them in the premises; that the agreement referred to in the jurat to the petition in said suit as the source of his authority shows that, August 25, 1887, 61 male and 30 female Indians residing in the counties of Cass, Van Buren, Berrien, and Allegan, Mich., and St. Joseph, Ind., signed a paper naming certain persons to act as a business committee for them in employing said attorney; and on the same day they held a meeting and elected one of their number as principal chief, who was to act with said committee in making the contract. September 29, 1887, this so-called principal chief and the business committee aforesaid, acting together and under the authority so conferred, made the con-

tract with the attorney referred to. It was acknowledged the same day in Van Buren county, Mich., and appears to have been approved in the Indian Office on the same day, although it was not acknowledged by parties in Washington until October 11, 1887. But it conferred upon said attorney no authority to act for any Indians other than the 91 mentioned. None of your petitioners were parties to or represented in any part of the transaction. Your petitioners have applied to the attorney in said cause for permission to take part in the suit and amend the petition therein so as to properly present the claim of all the Indians included in the said act of Congress, but said attorney refuses to accede to such request.

Your petitioners further state that the Pottawatomie Indians of Michigan and Indiana included in said act of Congress are the descendants and heirs of Pottawatomies once divided into and belonging to seven bands known as the Hurons, Maug-ach-quas, Mick-a-saw-bes, Match-e-be-nash-she-wish, Nottawaseps, Pokagons, and Prairie-Rondes, the latter being sometimes called Saganas band, the whole now numbering 1,622 persons as nearly as can be stated. About the year 1833, the Pottawatomies as a tribe removed west of the Mississippi river, but a number of individual members remained east of Lake Michigan, those remaining east being the Indians designated in the said act of Congress. Those included therein have no tribal organization or chief, and do not exist as a tribal body. They do not live in or hold tribal relations with each other. They are citizens of the United States scattered over Michigan from the straits to its southern boundary, and about 12 besides living in Indiana, earning their own living in various kinds of pursuits severally the same as white citizens. Your petitioners embrace all of the Indians mentioned in said act as far as their names could be ascertained, except not exceeding 250 descended almost entirely from the Pokagon band, 91 of whom are those taking part in the contract aforesaid, but they file this petition on behalf of themselves and all the other Indians included in said act who may choose to come in and share in these proceedings, including the 91 aforesaid.

Your petitioners further state that the treaty stipulations referred to in said act of Congress are those contained in certain treaties made between the United States and said Pottawatomie Indians, August 3, 1795; September 30, 1809; October 2, 1818; August 29, 1821; October 16, 1826; September 20, 1828; July 29, 1829; October 20, 1832; October 26, 1832; October 27, 1832; September 26, 1833, including the article supplementary thereto of September 27, 1833, and June 17, 1846.

That the Indians designated in said act of Congress were either ancestrally or directly parties to all of said treaties and entitled to share *per capita* in the annuities secured to the Pottawatomies thereby, and to severally participate in the benefits arising therefrom to them. In the earlier treaties they are called Pottawatomies, later the United Nation of Pottawatomies, and in the treaty of 1846 it was agreed they should be thereafter known as the Pottawatomie nation. By these several treaties the United States pur-

chased, and the said Indians ceded large tracts of land to the Government, amounting in all to about 30,000,000 acres, the lands aforesaid also granting the reservations held by them separately; and in payment the United States, among other things, agreed to pay them certain annuities, and also with other lands.

* * * * * * *

After deducting the payments of $75,162.50 aforesaid, there remains due the claimants in all the matters aforesaid, $963,058.50, and $804,383.80 of said amount belongs to your petitioners, and they demand judgment for said sum.

JNO. B. SHIPMAN,
Attorney for Petitioners.

Address: Coldwater, Mich.

DISTRICT OF COLUMBIA, }
City of Washington, } *ss:*

Before me, the undersigned, appeared John B. Shipman, attorney for the above petitioners, and made oath that he is the authorized attorney of the Indians named as petitioners in the foregoing petition in the matters above mentioned; that he knows the contents of said petition, and that the matters therein stated are true, so far as the same are stated on his knowledge, and as to the matters therein stated on the knowledge, information, or belief of the petitioners he believes them to be true.

Dated, Washington, November 5, 1900.

JOHN RANDOLPH,
Assistant Clerk, Court of Claims.

Judgment of the Court.

"The court, on due consideration of the premises, find for the claimants, and do order, adjudge, and decree that the said Pottawatomie Indians do have and recover of and from the United States the sum of one hundred and four thousand six hundred and twenty-six dollars."

Mandate of the Supreme Court

"It is now here ordered and adjudged by this court that the judgment of the said Court of Claims in this case be, and the same is hereby affirmed."

APPENDIX TO FINDING III.

Instructions of the Commissioner of Indian Affairs to Cadman.

That the inspector designated to take the census proceed to Benton Harbor, Mich., and to South Bend., Ind., the places of abode of the Indians referred to, and to take a careful census of the Pottawatomie Indians of Indiana and Michigan. * * * In taking the census the inspector should be guided by the roll (herewith inclosed) upon

which the payment was based in the *pro rata* distribution of the $39,000 made in accordance with the joint resolution of Congress approved July 28, 1866 (14 Stats., 370).

He should account for all the Indians (230 in number) whose names appear upon the roll referred to and then enroll all of those who can furnish positive proof of being legal descendants of the original 230 Indians. No additions are to be made to the original roll other than the descendants of the Indians whose names appear upon the roll above referred to.

Letter of John B. Shipman.

COLDWATER, MICH., *July* 27, 1895.

To Hon. Hoke Smith, Secretary of the Interior:

In the matter of the Pottawatomie Indians of Michigan and Indiana:

As directed by the Commissioner of Indian Affairs, I got in communication with Mr. Cadman, who is engaged in taking the census of these Indians with a view of making payments of the money appropriated by Congress for them, and finally met him.

It required but a few minutes' examination to discover it was impossible for the department to carry out and comply with the decision and findings of the court allowing the claim upon the line he was pursuing and under the directions he was obeying. He is enumerating and taking a census only of the Indians mentioned and contained in the pay-roll of 1866, and the heirs of those deceased. This is certainly and surely wrong, and as this seems a turning point in the matter and the question is a very important one, I must ask that the findings and opinions rendered by the Court of Claims therein be examined with great care. The findings of fact declaring or showing to whom the money belongs are all in the report, as well as the opinion explanatory of the findings. (See 27 C. Cls. R., p. 405.) In affirming the case the Supreme Court (148 U. S., 691) did not in any way change the finding and opinion of the court below. To aid in the investigation I state the question, how it arose, and how it was decided.

September 26, 1833, a treaty was made at Chicago with the United Nation of Chippewa, Ottawa, and Pottawatomie Indians, which made it obligatory upon the Indians who were parties to it to remove west of the Mississippi river in three years thereafter. The Michigan Indians were all opposed to emigrating west, and refused to join in the treaty which made it obligatory upon them to do so. The Michigan Pottawatomies at that time had three reservations in what was then the Territory of Michigan, one consisting of 49 sections on the St. Joseph river, opposite the town of Niles, occupied by Topenebees and Pokagonns bands, another being the Nottawasepis reservation of 4 miles square, and a third consisting of 99 sections north of it. September 27, 1833, a supplement was added to the treaty made the day previous, in which the Michigan Indians joined and became parties thereto, whereby these three reservations were

ceded to the Government, the last supplemental article, however providing that the portion of the tribe residing on the Michigan reservations might remove to the northern part of Michigan, in which case the "just proportion" of all the annuities payable to them under former treaties and that arising from the sale of those three reservations should be paid them at L'Arbre Croche (near the Straits of Mackinac).

(See the treaty in the U. S. St. L., 442–'5.)

After this, most of the Indians left the reservations, going into different parts of Michigan and many of them into the northern portion of it, but a part of the Pokagon and Nottawasepi bands remained in southern Michigan. No attention was given the Indians by the Government until 1843 (ten years after making the treaty), when small payments of money commenced to be paid them, which was continued yearly up to and including 1866; but the payments were made in the southern part of Michigan to those portions of the Pokagon and Nottawasepi bands remaining there, and not at L'Arbre Croche, as agreed in the treaty. These Indians and those going north numbered, all told, 1,100, as found by finding XI of the Court of Claims in the suit mentioned. To show the number of Indians paid, and the fact of their payment from 1843 to 1866, inclusive, a letter of Hon. E. B. French, of May 4, 1871 (then Second Auditor), was used in evidence and is contained in finding VII, but the only pay-rolls given in evidence were for the years of 1843 and 1844, and these were obtained by me under a call upon the Treasury Department. They are found in the printed evidence of the case at pages 123 to 126 (printed pages), and also in the return made to the court by the Secretary of the Treasury now in the files with the rest of the evidence taken by me in the cause. These two rolls of 1843 and 1844 were the only lists or evidence used in the court showing the names of the Indians who were paid by the Government at any time. No pay-rolls or other evidence showing the names of Indians paid after 1841 was in or can be found in the case.

It will be seen here were two classes of Indians, as stated by the court in finding XI, the one consisting of those to whom the payments in question were made and the other comprising those who went north and elsewhere in the State, and the question presented was, How many of them had a right to remain in Michigan and were therefore entitled to receive a "just proportion" of the annuities mentioned? I insisted that as all had equal rights in the reservations ceded, all should share equally in the avails when sold under the terms of the treaty and supplement thereto; but the court decided against me, holding that only those Indians to whom the payments mentioned were made came within the exemption as to removal west and were therefore the only ones entitled to a "just proportion" of former annuities, etc. (See finding XI.) Finding XIII states these payments were "made to a part of the Pokagon and a portion of the Nottawasepi bands of the Pottawatomie Indians," not to Pokagons alone, while finding XIV further defines

those entitled to the money and identifies and declares those coming within the supplemental articles as to removal to be "those parts of the Pokagons and Nottawasepi band to whom the payments mentioned in the said letter of Hon. E. B. French were made as shown in finding VII," while the pay-rolls mentioned in 1843 and 1844 contain the only information the court had as to whom those Indians were. Observe finding XII, also, which decided these Indians "represented in both petitions." The opinion rendered in the case also emphasizes this fact.

It must also be kept in mind that the matter to be arrived at was the Indians who had a right to remain in Michigan and be paid these annuities in 1833, not in 1866, and the court took as the best evidence of that fact the first pay-roll made after that year, viz, in 1843, the officers and agents of the Government having by the act of paying them recognized those Indians as the ones entitled to stay and be paid. To take one made in 1866, thirty-three years after the right under consideration arose, would manifestly work great injustice, for those having a right to stay up to 1843 or 1844 had a right to remain always and live where they chose in the State, and before 1866 many of them died, while others had moved north, and their names would not appear on the pay-roll of 1866, or other causes might have operated to prevent their names from being there; but their heirs are entitled to share in the fund just the same, and so should they if living. I am also told there are those on the roll of 1866 who have no business there.

Besides, the pay-roll of 1843 contains but 207 Pokagons, the rest to make up the 253 upon it are Nottawasepis, and 1844 the number of the Pokagons is 208; but the total number paid was 269, the balance being Nottawasepis, as noted on the roll, while the total number through all the years, as averaged by the court and upon which its award was based, was 291. To give the fund now all to the Pokagons, as will be the case if the census is based on the 1866 roll wholly, is to pay them money awarded by the court to the Nottawasepis.

I do not mean to say under the broad decision of the court that pay-rolls subsequent to 1844 cannot be considered or acted on, and if names there appear which are not on the rolls of 1843 and 1844 that such Indians (or if dead, their heirs) cannot share in the fund; but I mean and insist that the census should omit no one on the pay-rolls of 1843 and 1844 which were used on the trial in that case, and I respectfully ask that those rolls be sent Mr. Cadman at once and he be directed to include in his census all the Indians, or, if dead, the heirs of all the Indians whose names appear thereon. In no other way can the decision of the court rendering the judgment mentioned or the purpose of Congress in making the appropriation to pay it be carried out fully.

To aid the enumerator, I inclose the names of heirs whom I represent (as far as ascertained to date) and whose ancestors are named on the pay-rolls, as well as those entitled in their own right, the Nottawasepis and Pokagons being in separate lists, the numbers in the margin corresponding with the numbers in the pay-rolls. Where

two numbers appear, it indicates where the name appears on both the pay-rolls of 1843 and 1844. I might, if desired, get their residence also. I have not examined subsequent pay-rolls sufficiently to know whether or not I represent any upon them which are not on these.

I hope to be speedily advised of the course determined upon by the department, so that, if the conclusion is to proceed under the census based upon the roll of 1866, I may have time to seek a remedy before the fund is paid out.

Respectfully submitted by

JOHN B. SHIPMAN.

Decision of Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *January* 10, 1896.

Commissioner of Indian Affairs.

SIR: I have considered your communication of 9th instant, acknowledging receipt of department letter of 4th instant and submitting plan of enrollment of Pottawatomie Indians of Michigan and Indiana entitled to participate in the judgments of the courts in their case.

I concur in your opinion that only those should be enrolled who make satisfactory proof of their claim and who can show that they were on one of the rolls taken in the years 1843 to 1866, inclusive, or are descended from some one on one of those rolls.

Very respectfully, HOKE SMITH, *Secretary.*

Instructions to Agent Shelby.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *February* 5, 1896.

Marcus D. Shelby, special Indian agent, Washington, D. C.

SIR: You are hereby directed to proceed to South Bend, Ind.; Chicago, Ill; and Keeler, Bradley, Harbor Springs, Allegan, and such other points in the State of Michigan and elsewhere as in your judgment may be necessary, to examine and report upon the claims of the several parties alleging to be descendants of the Pottowatomie Indians of Indiana and Michigan, who were permitted, by the supplemental clause to the treaty of September 27, 1833, to remain east, and for whom the Court of Claims rendered a decision in their favor for $104,626 June 27, 1892.

Inspector Cadman last June made a census of the Pottawatomies of Indiana and Michigan and used as a basis for enrollment the last pay-roll upon which these Indians were paid in 1866. Since that time many persons have made claims for enrollment, submitting that their parents or ancestors were upon rolls prior to 1866.

The Honorable Secretary of the Interior decided, January 10, 1896, that only those should be enrolled who can make satisfactory

proof of their claim and who can show that they were upon one of the rolls taken in the years 1843 to 1866 or are descended from some one upon one of those rolls.

You will therefore require all persons applying to you for consideration of their claims to submit proof, fully substantiated by two or more reputable witnesses, that they are the direct descendants of some person upon some one of the above-mentioned rolls (copies of which are herewith furnished you), and, if possible, to tell what rolls their ancestors were upon.

If claim is made as a grandchild of some person whose name was upon one or more of the rolls above referred to, it will be necessary to show why his own parents were not enrolled, and whether they did not remove west, in compliance with the stipulations of the treaty of September 27, 1883, and there receive lands and annuities. Collateral descendants will in no instance be considered.

No doubt many Indians will present their claims who are the descendants of those Indians who were not included in the supplemental clause of the treaty and would not remove west and have ever since resided east of the Mississippi. This class have no rights in the money awarded, and a reference to the rolls will soon determine their status.

You will send notices to all points you will visit, to be posted in the post-office, giving timely advice of your arrival and the object of your visit. You will be furnished with these notices, which you will use when going to points not indicated in the instructions.

A copy of the Cadman roll is furnished you herewith for your information and guidance. As this office and the department have decided that all names now on the Cadman roll are entitled to participate in said payment, you will therefore make no additions to or deductions from said roll, as it is only furnished you for reference, as many who are already on said roll will probably apply to you to investigate their cases, and by reference to this roll you may save much time and annoyance.

You are not required to make any roll whatever, but will make report in detail, giving the evidence in each case separately, for the consideration of the office.

Respectfully,

D. M. BROWNING,
Commissioner.

Report of Agent Shelby.

CHICAGO, ILL., *March* 14, 1896.

Hon. Commissioner of Indian Affairs, Washington, D. C.

SIR: Under instructions from your office dated February 5, A. D. 1896 (A, 40 inclosures), directing me to make an investigation of sundry claimants' rights to enrollment upon Pottawatomie roll of Indians falling under the supplementary treaty of September 27, A. D. 1833, I have the honor to submit in detail my report upon each claimant submitted.

In addition to the list of those furnished me by your office, I heard the applications for enrollment of quite a number of other

Indians, who, in my judgment, have no standing in this matter, as they could not show that either themselves or their ancestors were enrolled upon any of the rolls from 1843 to 1866. I took no evidence in such cases, but informed the parties that they have no right to enrollment. I found it no easy task to show these Indians that the fact of their having Pottawatomie blood did not alone entitle them to the participation in the money soon to be distributed, and that it was awarded by the court to those coming under the supplemental treaty of September 27, 1833. They failed to see the justice in one part of the Pottawatomie Indians receiving money from the Government to the exclusion of the others. Very nearly all of these Indians have allied themselves with other bands and tribes of Indians and participated in annuities and the distribution of lands made said Indians. I found these people very badly scattered, and as they do not frequent post-offices, the notices prepared for me to be posted in the various post-offices, to give them notice of my coming, were of but little value. In nearly every instance, on reaching the vicinity of these Indians, I had to take teams and drive to their homes. I got, however, the newspapers to publish the principal points I would visit.

The complainants, Thomas L. Sancomb and Mistress Frances Edwards and Mistress Julia Howard, of South Bend, Indiana, could not show that either themselves or their mother, Mistress St. Comb—or Sancomb—were upon any of rolls from 1843 to 1866, but claim they were enrolled in 1836 with the Pottawatomie Indians and received certain annuities; this, I understand, to be the last payment made these Indians prior to their removal west of the Mississippi river. Their contention is that their failure to be enrolled upon subsequent rolls was because of the failure of Thomas L. Sancomb and his mother to reach the payment in 1843 before it was completed, and want of information as to subsequent payments, caused by the distance they were removed from the other Indians and a want of intercourse between them. They cite the facts that their mother, Mary St. Comb, as it was then written, is mentioned in Schedule A of the supplemental treaty of September 27, 1833, as receiving certain moneys, and contend this is sufficient proof that they were among those who were embraced in the supplemental treaty and should not be charged with their misfortune in not being enrolled from 1843 to 1866. To admit this to be true would in effect set at naught the acts of the agents in enrolling these people in 1843 to 1866, who certainly had a better knowledge as to who came under the supplemental treaty than we can possibly have at this late day. To enroll these people would, in justice to the numerous others mentioned in the various schedules of said treaty as having received money, become necessary to reopen the census roll of these Indians and admit to enrollment the scores of the descendants of the others named in the schedule referred to. It would take months of untold labor and necessitate the enrolling officer visiting nearly all, if not every State of the Union, should these people be entitled to enrollment. See Exhibit A for evidence and list of claimants.

Complainants Charles T. Chandonia and Mistress Fanny M.

Philion, heirs of Charles Chandonia's claim, is analogous to those of the Sancombs. They state that their father, Charles Chandonia, is mentioned in Schedule A of supplemental treaty of September 27, 1833, which fact establishes the right of his descendants to participate in the fund to be distributed, due the supplemental Indians. And further, that they recognize on the roll- of 1843, 1844, and 1845, the name of their father, which is spelled "Way-saw-way-shuck," and the spelling of the name on the roll of 1844 is erroneous in this, that the syllable "sun" in said name should be "saw." In examining the rolls, I find that there are enrolled on the roll of 1843 the name of Way-saw-way-shuck, wife, and four children, making six in the family; on the roll of 1844, Way-saw-way-shick, wife and two children, making four in the family; also on that roll is the name of Way-sun-way-shuck, and wife, making two in the family; on roll of 1845 we find Way-saw-way-shuck, wife, and two children. On the roll- of 1846, 1848, and 1849 the name seems to have merged into Way-saw-waw-shut and Way-saw-way-sut, and on each of these rolls is enrolled wife and two children. On rolls of 1847 Way-saw-waw-shut, wife, and one child appears. After 1849 this name seems to have dropped off the roll. The mother of the Chandonias was a white woman, and not entitled to enrollment. This fact, connected with the discrepancy in the name of the spelling of an educated Indian on the various rolls, and the discrepancy of the enrollment of the numbers of his children, together with his desire not to be known as an Indian on account of his political aspirations, convinces me that the Chandonias are mistaken in the Indian name they assumed to be that of their father's. See Exhibit B, list of family and evidence.

Sarah C. Anderson could not show the name of her ancestor on the roll of 1843 to 1866, in fact could not give her grandmother's Indian name (from whom she claims her Indian blood). Her grandmother was a negress from Virginia, and came to Indiana in 1839, and what Indian blood she had must necessarily have been from some southern Indian.

Mistress S. P. Sikes and Mistress Beulah E. Keith, of Keeler, Mich., sisters, and those they represent as their families, and their connection. Their mother was a Pottawatomie Indian and educated at Carey missionary station in Indiana, and received from the Government, upon graduating, a quarter section of land. She was never enrolled upon any of the rolls of Pottawatomie Indians, or received any annuities from the Government. Her husband was a white man, who broke off all intercourse with herself and her Indian relatives.

Joseph Paul, of Hartford, Mich., is a Miami Indian. Was enrolled on roll of said Indians in June, 1895, which roll was paid off by me the first quarter of 1896. He being in Michigan and not applying for his share on said roll, it was returned to the Treasury.

Mary Mackey, of Athens, Mich., has no claim to enrollment, because of the fact that her father, Mo-asa-qua, went west with the Pottawatomie Indians and drew annuities with them, and afterwards returned to Michigan. They have since been enrolled with what is known in Michigan as the Huron band of Pottawatomie

Indians, and participated in all the moneys of said Indians, and received some seven years ago $350, her share paid said Indians at that time. Her father stated to me that she was not entitled to share with the supplemental Indians.

Sophia Nah-lu-ga-be, of Bellaire, Mich., nor her father, Negosa, from whom she claims to have inherited Pottawatomie blood, can be found on the rolls from 1843 to 1866. She has no knowledge of her father having ever participated in any payment made the Pottawatomie Indians.

C. J. Allore, of Charlevoix, Mich., nor his mother, Elizabeth Allore, appear upon the rolls from 1843 to 1866; his mother having died in 1841 could not necessarily appear upon said rolls. C. J. Allore looks to be a full-blooded Frenchman, but has heard he has Pottawatomie blood in his veins, and having heard that they were soon to be paid money i- reminded him of his Pottawatomie blood, a fact that had been kept quiet from the balance of the community.

The name of Julia Spaulding, of Kingsley, Mich., nor her mother, Tennas Spidel, or her grandmother, Machewaqua, could be found on the rolls from 1843 to 1866. She, too, is entirely ignorant as to any participation on the part of her ancestors in any Pottawatomie payments, but having Pottawatomie blood thinks she should share in the distribution of the Pottawatomie fund.

John Pulcipher, of Acme, Mich., who wrote your office on February 1, 1896, stating there were a number of Indians in that community who were entitled to be enrolled on the roll of Pottawatomie Indians, stated that all of the Indians referred to in said letter were Indians who refused to go west with the main body of the Pottawatomie Indians and who fled to northern Michigan to escape the officers who removed them.

These Indians being here without permission from the Government and contrary to the stipulations of the treaty, I did not feel it my duty to spend any time in interviewing them.

Mary Hennessy, of Montague, Mich., states that her grandfather, A-ne-meke-we, was a Pottawatomie Indian, her grandmother an Ottawa Indian; neither her grandfather or her mother, Wa-we-yes, are on the rolls from 1843 to 1866. She knows nothing of her grandmother having participated in any payment made to the Pottawatomie Indians, but that her ancestors, she has been informed, were allied and shared in the annuities of the Ottawa Indians. The husband of Mary Hennessy states that George Armstrong, her uncle, paid D. K. Foster $1, with the promise that he would have her enrolled on the roll of the Pottawatomie Indians. This, Foster says, is true, and he received the dollar as an attorney fee for his services.

Lewis L. Woodville, of Oregon, Ill., and his uncle, Alex. Beaubien, of Chicago, made no claim that they or their ancestors were upon the rolls from 1843 to 1866. Alex. Beaubien stated that neither he or his ancestors had been enrolled since 1836, at which time they were paid with other Pottawatomie Indians; he thinks they were among those included in the supplemental treaty, but knew nothing of subsequent enrollments and payments after 1836.

The Beaubien family, I understand from them, was given

by the Government large tracts of land in and around the city of Chicago, and were once quite wealthy in consequence of said gift, but it all seems to have vanished. Their wealth, no doubt, and social standing in the community dwarfed, doubtless, their desire at that time for further participation in Indian payments.

I do not understand why I was given the communication of Eliza Mendoky, as she makes no claim to enrollment on the Pottawatomie roll, but complains that her husband, Joseph Mondotey, has deserted, and that there is deposited $110 in S. R. Kirk & Son's bank of Athens, Mich., for her minor child, Angeline Mendokey, and wants the interest paid to her for the support of her said child. I wrote to S. R. Kirk & Son for her and found, as I expected, that S. R. Kirk was the guardian of her daughter, Angeline, and that the money for said minor was paid said guardian by the disbursing officer in making a payment to the Huron band of Pottawatomie Indians some seven years ago. This matter has now passed into the hands of the probate court of Calhoun county, Mich., and I have advised her to apply to the probate court and ask that the guardian be directed to pay to her as the custodian of her said child all sums of this money that should be expended for her support.

The long list of applicants for enrollment forwarded the office by D. K. Foster, of Bradley, Mich., was by D. K. Foster abandoned with one exception when he saw he would have to show that the applicants and their ancestors were upon some one of the rolls from 1843 to 1866. They are all Pottawatomie Indians. But Mr. Foster, as above stated, finding it would be difficult to prove this fact, abandoned this list. But they allied themselves with the Ottawa and Chippewa Indians in 1855 at a treaty made with said Indians at Detroit, Mich., and shared in the annuities and distribution of lands made said Indians in 1855 to 1871, and were never enrolled with any Pottawatomie Indians. Alice Sprague, however, who is named in said list, thought she recognized the name of her grandmother, Oge maw quay, on rolls of 1853, 1854, and 1866, and made affidavit covering that fact and gave a list of the descendants of her supposed grandmother. D. K. Foster and P. Pas she go qua made an affidavit of identity covering the same state of facts as Alice Sprague. Among those mentioned in the affidavit of Alice Sprague as the descendants of her supposed grandmother was Joe H. Cushaway on census-roll of Pottawatomie, and Alex. Chippewa (Lewis), her cousins. When I reached Fern, Mich., the home of Joe H. Cushaway, he made an affidavit that Oge maw quay named as the grandmother of himself and Alice Sprague, in her affidavit, was not their grandmother, but was the mother of Aken on said roll, and further that he is now 47 years of age, and that he never knew his grandmother, whose name was Oge maw quay, she having died some years before he was born. Substantially the same state of facts are sworn to by Angeline Cushaway, wife of Joe H. Cushaway, and Alex. Lewis, who is also a grandson of Oge maw quay. Joe H. Cushaway and his wife, Angeline Cushaway, were raised among the supplemental treaty Indians, and remembered to have attended various payments made to said Indians, and had a better knowledge

of knowing these Indians than Alice Sprague, who has never been enrolled among them, and whose association and enrollment were with the Chippewa and Ottawa Indians. I am clearly of the opinion that these people are not entitled to enrollment. See Exhibits C and D for evidence and list of descendants.

Alex. Lewis, of Mount Pleasant, Mich., is a new applicant. He is the same party named in the affidavit of Alice Sprague under the name of Alex. Chippewa as the grandson of Oge maw quay. He bases his right to enrollment upon the fact that when about 2 years of age he was given by his mother, Pen quay, to his aunt, Ke no maw ne quay; that he was raised by said aunt, and was one of the three children enrolled with said aunt in 1866, Joe H. Cushaway, a nephew, and Stephen Pepeypeyor, a grandson of said aunt, being the other two children.

I learned after taking Alex. Lewis's affidavit that he had a child not mentioned, and wrote to Joe H. Cushaway and requested him to furnish your office with the name and age of said child. The facts above enumerated are sworn to in an affidavit also by J. H. Cushaway and his wife, Angeline Cushaway.

I was informed by Joe H. Cushaway that Angeline Pokagen, wife of Charles L. Pokagen, on census-roll was the daughter of Pe wa se quay, roll of 1856, No. 12, and that said Angeline Pokagen is his sister, and that said Angeline Pokagen was the child enrolled with his said mother in 1856, and should be enrolled with her said husband on the census-roll of the Pottawatomie Indians. Joe H. Cushaway discovered the above fact just after I had completed my work at his house, which was then at 10 o'clock at night and snowing, and I had yet 12 miles to drive through the snow back to the railroad in order to get a place to lodge for the night; so I did not take his affidavit to the above statement of facts, to which he would have sworn. He further states that his sister, Angeline Pokagen, had by a former marriage a daughter, Eliza Aiken, aged 17 years, now living at Newaygo City, Mich.

John J. Peashaway, residing at South Bend, Ind., and grandson of John Peashaway, Pottawatomie Indian, states that he believes that the name of Peasaway, as it is spelled on the roll of 1843, 1844, and 1848 and 1859, is his grandfather, and that his said grandfather had three children, viz., Henry Peashaway, his father, who is supposed to be dead; Lizzie Peashaway, now the wife of Lawrence Mix, and Julia Alexas, wife of Davis Alexas, who is enrolled on census-roll. The mother of the Peashaways is not claimed to be a Pottawatomie woman, but reference to the roll will show that Peashaway, as it is spelled on this roll, had enrolled with him in 1843 wife and three children; in 1844 and 1848, wife and six children; in 1859, wife and four children. The name of Peashaway seems to have dropped off the roll in 1848 until 1859, when it is again dropped from the roll and does not reappear. Simon Pokagon states in his affidavit that John Peashaway never was enrolled and drew with said Indians because the agent knew that he was not one of those who came under the supplemental clause and would not permit him to be enrolled, but that Peashaway attended the

payment in 1843 and subsequent payments, and that he does not believe the name of Peashaway on the rolls mentioned is the grandfather of John J. Peashaway and others named in his affidavit, and that he did not know any other Peashaways belonging to the Pottawatomie Indians. Elizabeth Mix states in her affidavit that she has no knowledge of her father being enrolled on roll of Pottawatomie Indians, but remembers when a child hearing him speak of Indian payments and drawing annuities; that she believes that the name of Peashaway upon the various rolls and as it spelled is her father. The discrepancy in the spelling of the Peashaway name and the excess in number of his family over and above those given by John J. Peashaway, together with his name being off and on the roll, as already stated, leaves doubt in my mind as to the right of these parties to enrollment, and creates the belief that they are mistaken in the name of the Peashaways on said roll being their father. Should they be held to strict proof, they certainly have no rights. See Exhibit D for evidence and list of claims.

Andrew J. Blackbird, of Harbor Springs, Michigan, states that he believes that the name of Seebeequay on roll of Pottawatomie Indians in 1844, No. 6, is his grandmother; that his grandfather and grandmother were Pottawatomie Indians, and that his said grandmother remained with the Pottawatomie Indians until 1845, when she moved to northern Michigan and died during that year; that all of the descendants of his said grandmother lived in northern Michigan and intermarried with the Ottawa Indians and were enrolled with said Indians in 1836, and participated in the treaty of 1855 with said Indians and the United States Government, and shared in the annuities and lands awarded said Indians under both of said treaties until the year 1871, when their last treaty expired. You will observe that he does not state positively that Seebeequay is his grandmother enrolled in 1844, nor has he any knowledge that she drew money with the supplemental Indians in 1844, nor does he know that there was not another Pottawatomie Indian by the name of Seebeequay. You will also observe that he is now 80 years of age and has always lived among the Ottawas. He stated to me, which does not appear in his affidavit, that he never lived among the Pottawatomie Indians or knew anything about them. It might be well to state it is only necessary to show these people a name upon the roll that is similar, or is the name by which their ancestors are known, for them to jump at the conclusion that it is the name of their ancestor, and are ready to make the necessary affidavit and proof without knowing whether he or she actually drew money at the time or date stated in said roll, or that there was not another member of the tribe of the same name of their ancestor. He had no one within reach by whom he could prove his identity, and I left him with the necessary affidavit to have accomplished and forwarded to your office. The bare fact that the direct ancestors of these people were Ottawa Indians and enrolled with said Indians and participated in their annuities from 1836 to 1871 should bar them from participating in the payment soon to be made, to say nothing of his total

want of proof that Seebeequay on the roll of 1844 is his grandmother and his inability to identify her as having drawn money at that time. See Exhibit E for evidence and list of family.

I took the affidavit of S. M. Ski ppr qush, who thought the name of Way see bah was his grandmother, but afterward upon examining the case I saw that he had wholly failed to make a case, and will not burden this report with a long history of the Ski ppr goshes.

While my instructions were not to interfere with census-rolls, I found the Indians were violently opposed to the enrollment of the Cowles heirs on said roll, and Simon Pokagen and Elizabeth Mix asked to be permitted to enter a protest to their enrollment. And from their affidavit you will see that Edward Cowles Kawkawkawshe, as he was enrolled, was not a Pottawatomie Indian, but was a half-breed Chippewa Indian. About the year 1857 Edward Cowles was admitted to the roll of said Indians because of his education and means, with the understanding that he should be enrolled with said Indians and share in their annuities, and that such share as he drew should go as a compensation for his services in prosecuting the claim so to be distributed before the Government. I was told this by a number of other Indians, who have had correspondence with C. C. Cowles, son of Edward Cowles, now living at Council Bluffs, Iowa, which letters will be marked as an exhibit, that convinces me that the statement of Pokagen and others is true. C. C. Cowles was to have met me here, but has so far failed.

In my judgment, none of these Indians have any right to enrollment on the roll of Pottawatomie Indians coming under the supplemental treaty of September 27, 1833, for the reason that all, with possibly two exceptions, have failed to make positive proof. They themselves or their witnesses could not state positively that their supposed ancestors were ever enrolled with said Indians, or that they drew money on the roll upon which they were found, or that there was not another Pottawatomie Indian by the same name. Alex. Lewis furnishes the same evidence as that which admitted Joe H. Cushaway to enrollment, and think he should be enrolled, and do not think an error would be made if Angeline Pokagon, wife of Charles L. Pokagon, and child were enrolled, who were mentioned on census-roll by Inspector Cadman as not being found on roll of 1866.

Respectfully,

(Signed) M. D. SHELBY,
Sp'l Indian Agt.

Filed May 20, 1901.

[Endorsed:] File No. 18351. Supreme Court U. S. October term, 1901. Term No. 498. Phineas Pam-to-Pee and others, app'ts, *vs.* The United States. Stipulation and addition to record. Filed Jan'y 17, 1902.

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FEB 3 1902
JAMES H. McKENNEY,
Clerk

IN THE

Supreme Court of the United States.

PHINEAS PAM-TO-PEE ET AL.,
APPELLANTS.
v.
THE UNITED STATES.

No. 211

Now come the appellants in this cause and move the court to advance the same and fix an early day in March to hear it, for the following reasons:

STATEMENT.

By an act of Congress approved March 19, 1890, the Court of Claims was given jurisdiction to try and determine the claims of certain Indians to unpaid annuities under various treaties with the Pottawatomie tribe (26 St. 24) under which suits were prosecuted, resulting in a judgment by said court in favor of the Indians for the annuities then due, and establishing those to grow due (27 Ct. Cl. 403. Affirmed, 148 U. S. 691.) Congress appropriated money to pay the judgment and also the perpetual annuities, these being capitalized, directing the Commissioner of Indian Affairs to disburse the fund among the Indians entitled. The claimants in the case at bar, numbering 272, were also claimants in the suit wherein said judgment was rendered, and entitled to share with the other Indians in the distri-

bution of said fund appropriated to pay it, but none of it was paid to them. Hence this suit, which in reality is but a proceeding to carry said judgment into effect. The act mentioned, of March 19, 1890, provided: "And the said courts shall give such cause precedence." The present suit comes within the spirit if not within the letter of that provision, while the need of speeding the litigation is greater now than when the Indians were younger. Therefore a favorable consideration of the motion is respectfully urged.

JNO. B. SHIPMAN.
Atty. for Appellants.

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